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HAROLD B. WILLEY, Cle

In the Supreme Court of the United States

OCTOBER TERM, 1952.

No. 745.

JULIUS ALLEN,
Petitioner,

vs.

NATIONAL TUBE COMPANY,
a corporation,
Respondent.

REPLY BRIEF OF PETITIONER
In Support of Petition for Writ of Certiorari.

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The respondent in its brief cites the case of *Manley, et al. vs. Truscon Steel, et al.*, No. 128,209, Mahoning County Court of Common Pleas of Youngstown, Ohio, and attaches as an appendix an excerpt from the brief of the United Steelworkers of America filed in that case. Respondent's brief does not disclose the decision of the Court. The case was heard by Judge David D. Jenkins, who rendered his decision on March 27, 1952 in a lengthy opinion in which he discussed the issues of *federal* law raised by the 120-day limitation clause of the January 13, 1947 supplemental agreement between the steel industry and the United Steelworkers of America—C. I. O. Judge Jenkins rendered his decision in *favor* of the plaintiffs. We quote in part from his opinion:

> "The court is aware that this case presents issues of far reaching import, reviewable by the highest court in the land, but which, though seemingly not considered by the tribunals which have been cited as having the questioned clause before them, confront

this court at the outset of its consideration as basic, determinative and even elementary. These arise from public policy. * * *

"The public interest, that is, the public policy, of the United States requires the collective bargaining agency, as to each and all in the unit represented, to treat them fairly, impartially, without discrimination and in good faith. Under the Act the employer, also, is required to give 'equally advantageous terms to nonmembers of the labor organization negotiating the agreement.' (Footnote, Steele case, supra, 202.) This is the yardstick with which the provision of the contract here in question is to be measured * * *.

"Measured by the foregoing the discrimination as between those employees on the payroll on the official date and those not is clearly not one based on the approved relevant differences. Measured by the requirements of public policy as to representation fairly, impartially and in good faith as to each and all, it also does not. * * *

"The good faith of the United States is directly involved in the carrying out of this public policy impartially to all those who in that retroactive period—the war years—remained at their work,—essential war work,—at the frozen wage rates, under their government's promise that its agent, their collective bargaining agent, would secure wage adjustments retroactively for each and all uniformly and without discrimination. Public policy renders invalid whatever has the tendency to be injurious to the public welfare or is against good morals. Nothing can be more injurious than loss of faith in our government and its agencies as carrying out scrupulously 'justice to all.' * * *

"Where an agent in exercising his mandate performs acts some of which are valid and others invalid, and they are capable of separation, those which are authorized will not be vitiated by those which are

unauthorized; and so the agent's conduct may be good pro tanto insofar as it comes within the terms of his mandate and ineffective only as to the remainder. 2 C. J. S. 1344. * * *

"Reformation of instruments is an equitable remedy operating indirectly to protect primary rights, its object is to remove obstacles which hinder the enjoyment of such rights. The obstacle here is the clause 'within 120 days after the date on which the standard hourly wage rates are officially established.' That clause is declared void, for the reasons herein stated. The contract is ordered reformed by its elimination. The contract as so reformed is adjudged a valid subsisting contract, beneficial to all the parties hereto. * * *"

Thus, from these few excerpts of his opinion, it can be seen that Judge Jenkins was aware of the far reaching import of the issues involved in this case, and as he points out, these issues seemingly have not been considered by other tribunals which have considered the question of the 120-day clause. He finds the clause to be contrary to the public policy of the United States; that it is discriminatory as to former employees. Invoking the equitable doctrine of reformation, Judge Jenkins ordered the 120-day clause deleted from the contract.

The *Manley* case is now pending on appeal; no doubt awaiting the outcome of the petition for writ of certiorari in the case at bar.

Respectfully submitted,

LEVIN & LEVIN,

By JACOB LEVIN,

Attorneys for Petitioner.